

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Li et al.	Art Unit	: 1647
Patent No.	: 7,579,439	Examiner	: Fozia M. Hamud
Issue Date	: August 25, 2009	Conf. No.	: 9466
Serial No.	: 10/749,699		
Filed	: December 30, 2003		
Title	: MODULATION OF IL-2 AND IL-15 MEDIATED T CELL RESPONSES		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF
DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

In a Decision on Request for Reconsideration of Patent Term Adjustment and Notice of Intent to Issue Certificate of Correction (“Decision”) dated June 22, 2010, the United States Patent and Trademark Office (“Office”) granted in part Patentee’s Application for Patent Term Adjustment Under 1.705(d) (“PTA Application”), which was filed October 26, 2009, for the above patent.

In the PTA Application, Patentees detailed a calculation of “A Delay” that totaled 415 days, a “B Delay” that totaled 214 days, an Applicant Delay that totaled 309 days, and calculated no period of overlap of “A Delay” and “B Delay.” In its Decision, the Office disagreed with Patentees’ calculation of the period of “B Delay,” asserting that Patentees failed to properly calculate the reduction of “B Delay” for the period of time consumed by continued examination of the application (for the filing of a Request for Continued Examination (“RCE”)) under 37 C.F.R. §§ 1.702(b)(1) and 1.703(b)(1). In the Decision, the Office states the following at page 1:

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the ‘B’ delay period, the over three year period begins on December 30, 2006 and ends on March 2, 2008, the day before the RCE was filed, the B delay is 427 (not 429) days.

Neither the Office’s calculated period of “A Delay” nor the Office’s calculated period of Applicant Delay as shown in the PAIR PTA History and further detailed in the PTA Application

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: July 22, 2010.

filed on October 26, 2009, is disputed herein; rather, at issue is the period of "B Delay" as calculated by the Office.

Patentees respectfully submit that the Office's calculation of the period of "B Delay" contains an error and should instead be calculated as 428 days, and not 427 days as indicated above. In particular, the "over three year period" begins on December 31, 2006 (the day after the date that is three years from the filing date of December 30, 2003), and extends until March 2, 2008 (the day before the date on which an RCE was filed). This period of time, from December 31, 2006, through March 2, 2008, is a period of 428 days:

Year	Days	Dates On Which "B Delay" Accumulated
2006	1 day	December 31, 2006
2007	365 days	January 1, 2007 – December 31, 2007
2008	62 days	January 1, 2008 – March 2, 2008; noting, particularly, that 2008 was a leap year

As such, the total period during which "B Delay" accumulated totals 428 days (1 day plus 365 days plus 62 days), and not 427 days as outlined by the Office in the Decision. As the "B Delay" calculation must be further reduced by the period consumed by appellate review (in this case, 215 days as confirmed by the Office in the Decision at page 1), the total Patent Term Adjustment ("PTA") calculation should be calculated as 319 days (415 days of "A Delay" plus 428 days of "B Delay" less 215 days of appellate review less 309 days of Applicant Delay), and not 318 days as indicated by the Office.

In view of the foregoing remarks, Patentees respectfully submit that the current calculation of 318 days of total PTA contains an error and request its correction to reflect a total PTA calculation of 319 days as outlined above.

Applicant : Li et al.
Patent No. : 7,579,439
Issued : August 25, 2009
Serial No. : 10/749,699
Filed : December 30, 2003
Page : 3 of 3

Attorney's Docket No.: 13985-0057002 / BIDMC #404

As the fee for requesting reconsideration of the PTA calculation was paid in conjunction with the PTA Application filed October 26, 2009, Patentees believe no fee is due for this filing; however, please apply any charges or credits due to Deposit Account No. 06-1050, referencing Attorney Docket No. 13985-0057002.

Respectfully submitted,

Date: July 22, 2010

/Jeannie Wu, Reg. No. 56,265/
Jeannie Wu, Ph.D.
Reg. No. 56,265

Fish & Richardson P.C.
PTO Customer No. 26161
Telephone: (617) 542-5070
Facsimile: (877) 769-7945